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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 91

SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON,

Petitioner,

v.

VLADISLAV KELEMEN, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Ohio.

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v.

VLADISLAV KELEMEN, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI To the Supreme Court of the State of Ohio.

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Ohio entered in the above-entitled case on February 14, 1968.

CITATIONS TO OPINIONS BELOW.

An opinion under date of August 12, 1966 of the Judge of the Court of Common Pleas of Summit County has not been officially reported. It is presented in Appendix A, *infra*, p. 13.

The journal entry of the Court of Common Pleas following the above opinion is printed in Appendix A, *infra*, p. 43.

An opinion under date of August 2, 1967 of the Court of Appeals for the Ninth Judicial District has not been officially reported. It is presented in Appendix A, *infra*, p. 49.

An opinion under date of October 11, 1967 of the Court of Appeals for the Ninth Judicial District on motions and applications subsequent to the opinion referred to immediately above has not been reported. It is presented in Appendix A, *infra*, p. 61.

The judgment resulting from the two opinions referred to immediately above is printed in Appendix A, *infra*, p. 64.

The orders of the Supreme Court of Ohio under date of January 17, 1968, overruling petitioner's Motion to Certify the Record of the Court of Appeals and dismissing petitioner's appeal as of right from the Court of Appeals are presented in Appendix A, *infra*, p. 67. The order of the Supreme Court of the State of Ohio under date of February 14, 1968, denying petitioner's motion for rehearing is printed in Appendix A, *infra*, p. 68.

JURISDICTION.

The judgment of the Court of Appeals of the Ninth Judicial District of the State of Ohio was entered on October 23, 1967, Appendix A, *infra*, p. 64.

The Supreme Court of the State of Ohio on January 17, 1968, dismissed petitioner's appeal to that court, Appendix A, *infra*, p. 67.

The Supreme Court of the State of Ohio denied petitioner's Motion for rehearing on February 14, 1968, Appendix A, *infra*, p. 68.

The jurisdiction of this Court is invoked under 28 U. S. C. A. § 1257(3).

QUESTION PRESENTED.

Do the actions of a civil court, in rendering a decision denying to certain hierarchical church members the right of worship in such church, and in rendering a decision that certain hierarchical church members are schismatic, absent any decision by any church authorities that such church members are schismatic, taken together violate Amendment I of the Constitution of the United States and Amendment XIV, Section 1 of the Constitution of the United States, when such decisions have the effect of making civil authorities the arbiter of purely ecclesiastical questions?

CONSTITUTIONAL PROVISIONS.

The constitutional provisions which petitioner contends have been violated by the judgment of the Court of Appeals of the Ninth Judicial District of the State of Ohio are the following:

Amendment I of the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

Amendment XIV of the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

In 1963 clerics and religious functionaries of the Serbian Orthodox Church sitting in Belgrade, Yugoslavia took two actions: (1) They suspended and/or defrocked a man, Milivojevich Dionisije, who had been Bishop of the one diocese for the entire United States of America and Canada; and (2) They attempted to divide that diocese into three for administrative purposes and to replace Bishop Dionisije with three other individuals.

Those two actions resulted in splits in most, if not all, of the Serbian communities in the United States and Canada, sixteen of which, in seven different jurisdictions, resulted in litigation. (See Appendix B, *infra,* p. 68.)

In Akron, although there was a division in Akron in 1963, litigation did not ensue until June of 1964 when petitioner herein filed an action in the Common Pleas Court as an unincorporated religious association, asserting a property right in its name and asking that the defendants be enjoined from using that name.

Defendants filed an answer and cross-petition asking that the plaintiff association be declared not to be the true St. Demetrius Church; and further asking that the plaintiff-association be ordered to abandon the church and to transfer all control of the church and its assets to a caretaker board appointed by one of the three new dioceses.

Plaintiff in its answer to the cross-petition asserted that the purported new diocese was a nullity because it was not created in accordance with the provisions of two governing constitutions, one being the governing document of the diocese for the United States and the other being the governing document for the church structure itself.

The case went to trial in April 1966 and a decision was reached in August of 1966 (Appendix A, *infra,* pp.

46-47, Opinion of J. Matz), which was journalized in October 1966. Following the journalization of the decision a motion for new trial was filed and overruled on December 13, 1966. That opinion and entry ordered the plaintiff-association, petitioner herein, to surrender control of the church to the defendants as being those who are the true adherents of the Serbian Eastern Orthodox Church, and the trial judge recited that he did not feel it necessary to decide the question of the validity of the division of the diocese but regarded himself as bound by the decision of the church authorities.

Plaintiff took an appeal to the Court of Appeals of the Ninth Judicial District, State of Ohio, and that court announced its opinion on August 2, 1967 (Appendix A, *infra*, p. 49). In its opinion the Court of Appeals recognized the necessity for it to decide the validity of the diocesan division and decided it in accordance with the viewpoint of the plaintiff-association, that is, that Belgrade had exceeded its authority when in 1963 it attempted to go beyond the governing written documents of the two church structures and unilaterally divided one diocese into three.

The Court of Appeals then asserted that the members of the plaintiff-association, although correct in their viewpoint that there had been only one diocese, were wrong when they continued to assert loyalty to the only head of that diocese, Bishop Dionisije, who had supposedly been defrocked, and the Court of Appeals found the action of the plaintiff-association in following that man to constitute schism although they did not find that the actions of the defendants in following bishops unlawfully created to head non-existent dioceses amounted to schism.

In the lengthy initial trial and in the many voluminous briefs filed since on both sides, it has nowhere been asserted that any determination of schism has been made

by any church authority, the validity of which is recognized within the law of this case.

The petitioner herein, plaintiff-appellant below, requested a supplemental hearing on the Court of Appeals level and it was granted, resulting in an additional opinion (Appendix A, *infra,* p. 61). The two appellate opinions were journalized on October 23, 1967 and plaintiff-appellant on November 13, 1967 took appeal to the Supreme Court of Ohio.

That Court on January 17, 1968 denied hearing and on February 14, 1968 denied plaintiff-appellant's motion for a rehearing.

It is, therefore, apparent that petitioner herein is appealing from the opinion of the highest court of the State of Ohio from which an opinion was or could have been obtained, and petitioner now presents to this Court this petition for a Writ of Certiorari.

PRESENTATION OF THE FEDERAL QUESTION.

According to Ohio's procedure (O. R. C. 2505.23) petitioner's appeal to the Court of Appeals was a trial de novo on the basis of the record below and it is the opinion of the Court of Appeals, together with its Journal Entry which first denied to petitioner in terms petitioner's right to worship at the church structure with this language:

> "That faction now in control of St. Demetrius has no right to worship as a group in St. Demetrius." (Appendix A, *infra,* p. 66.)

Only after the rendering of the opinions of the Court of Appeals and the filing of its Journal Entry did the federal question first become apparent for only then was there a denial by a civil court of this religious right. Accordingly, petitioner's first opportunity to raise the federal

question was in its Memorandum in Support of Jurisdiction, filed with petitioner's request for a hearing before the Supreme Court of Ohio.

Petitioner asserted four questions of law in that Memorandum. Question 4 thereof reads in full as follows:

> Does the guarantee of religious freedom found in the First Amendment to the Constitution of the United States of America, and does the similar guarantee found in 1851 Constitution of Ohio, Article I, Section 7, termed therein "a right of conscience," permit a civil court to declare one part of a church dispute to be schismatic when that church is episcopal and hierarchical in structure and the church itself has not so declared; and do those constitutional provisions permit a civil court to render an express ruling on who has a right to worship in a given church?

and there was urged upon the Supreme Court of the State of Ohio in support of Question 4 that it had been long established law that the principles of the First Amendment regarding freedom of religion had been made applicable to the states by reason of the Fourteenth. (*Kedroff v. St. Nicholas Cathedral,* 344 U. S. 94 (1952) and *Engle v. Vitale,* 370 U. S. 421 (1962).)

It was further urged that ever since *Watson v. Jones,* 80 (13 Wall.) U. S. 679 (1871), that it had been the law of this country that civil courts were to abstain from religious disputes insofar as possible and defer to sources of authority within the church. The Supreme Court by its refusal to decide the questions presented upheld the judgment of the Court of Appeals, which judgment had decided purely ecclesiastical questions and by so doing decided petitioner's timely raised federal question against petitioner.

REASONS FOR GRANTING THE WRIT.

1. There is great current public interest in the power of civil courts generally over church affairs.

Petitioner has been advised that a petition for Writ of Certiorari to the Supreme Court of the State of Georgia in the case of *Presbyterian Church in the United States, etc. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* will be or has been filed in this Court by the office of Robert B. Troutman and Charles L. Gowen, 434 Trust Company of Georgia, Atlanta, Georgia, 30303, and petitioner has been furnished a copy of that petition.

It is apparent from an examination of that petition that the Supreme Court of Georgia considered that it was proper according to Georgia procedure to submit to a jury the question as to whether certain acts by an intermediate church body (the General Assembly of the Presbyterian Church for the State of Georgia) constituted an abandonment of the original doctrines of the Presbyterian Church in the United States so as to justify local church members in withdrawal from the intermediate body. That litigation allowed withdrawal and resulted in an injunction against the Presbyterian Church in the United States and its authority from using church properties.

In our factual situation, the ruling of the highest court in Ohio from which a ruling could be obtained seems to have resulted in the court's upholding church authority, whereas the Georgia opinion seems to have resulted in the court's upholding dissidents.

However, in both states civil courts have regarded themselves as competent to rule in areas where the church bodies have either ruled in a fashion contrary to the ruling of the court or have chosen not to rule at all, and petitioner submits that this Court, in keeping with its fundamental role as an interpreter of the Constitution of the United

States, together with the Amendments thereto, ought now to grant the Writ and to furnish guidelines for the courts in Ohio, of Georgia, and all other states as to the extent to which those courts may interfere in disputes within the internal organizational structure of churches.

Petitioner further refers this Court to Appendix B, *infra,* p. 68, wherein is set forth a list of litigation involving the Serbian Church dispute as further evidence that there is much litigation involving church disputes, perhaps reflective of the increasing social change taking place in many other areas in our country today.

2. The decision of the Court of Appeals of Ohio is contrary to the decisions of this Court interpreting the First Amendment to the Constitution of the United States.

As a first proposition, it has been well settled since *Shelley v. Kraemer,* 334 U. S. 1, 14-16 (1948) that when there is involved the question of invasion of constitutional rights, a judicial decision is the same as legislative action so far as constituting "state action."

This Court in *Cantwell v. Connecticut,* 310 U. S. 296 (1940) held that the freedom of religion clause of the First Amendment was made applicable to the States by the Fourteenth. Headnote 3 of *Kedroff v. St. Nicholas Cathedral,* 344 U. S. 94 (1952), specifically stated that the religious freedom principles of the First Amendment were made applicable to the States by the Fourteenth, and *Engle v. Vitale,* 370 U. S. 421 (1962) specifically stated that the free exercise clause reached the States because of the Fourteenth.

Petitioner submits that what the Court of Appeals has done is enter into an area where it has no power because

of the First Amendment, and petitioner cites in support thereof the following cases:

Watson v. Jones, 80 (13 Wall.) U. S. 679 (1871). This case was not decided on a First Amendment basis and so is perhaps inapplicable, but read as a whole that opinion advocates broad judicial abstention from religious disputes and deference to the sources of authority within the church. It is nowhere stated in the opinion or journal entry issued below that the court was simply enforcing some decisions of a church authority as to who was or was not schismatic. The court simply determined what facts had transpired in the conduct of affairs of the disputants and then characterized certain of those facts as amounting to schism, although no church body had ever done so. In fact, up to the date of dictation of this petition, no church body has yet done so.

United States v. Ballard, 322 U. S. 78 (1943), wherein Mr. Justice Douglas, speaking for the majority, stated that "the constitutional guarantee of religious freedom does not select any one group or any one type of religion for preferred treatment but puts them all in that position." Further on page 88,

> "* * * we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents."

and Mr. Justice Douglas went on to quote from *Watson v. Jones,* 80 (13 Wall.) U. S. 679 (1871):

> "The law knows no heresy and is committed to the support of no dogma, the establishment of no sect."

Petitioner urges that what the Court of Appeals has done is regard itself as competent to "know heresy" in that it

decided that certain acts were schismatic although no such decision had been made prior to that time by church authority and that what the Court of Appeals effectively did was to "select one group for preferred treatment" although it has long been the law of the United States that the court may not do so.

Everson v. Board of Education, 330 U. S. 1 (1947). Mr. Justice Black, speaking for the majority at p. 15, enunciated what we believe to be the law controlling our dispute and the law which ought to result in this Court's granting petitioner's request for a Writ. He said:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can openly or secretly participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.' "

Petitioner believes that the State has participated in the affairs of a religious organization by its act in characterizing certain parties to an internal church dispute as schismatic, and certainly by its act in ordering that "that faction now in control of St. Demetrius has no right to worship as a group in St. Demetrius."

Sims v. Greene, 160 F. 2d 512. Petitioner believes that this language, found at p. 515, is an apt summation of the First Amendment limitations applicable herein:

> "The power of a civil court * * * in respect to disputes between warring church factions is limited to the enforcement of the judgment or order of the religious tribunal or tribunal judicatory if the order or judgment of the tribunal or judicatory has been reached in accordance with the law of the church."

There has never been assertion made by respondents that any religious judicatory or tribunal has characterized petitioner as schismatic or has denied to petitioners the right to worship. Astounding as it may be to those dealing with the Constitution on a daily basis, a civil court has done exactly that—denied in terms the right to worship.

CONCLUSION.

For the foregoing reasons, we submit the question presented by this appeal as to the power of a civil court to intervene in a religious dispute and make its own determination as to whether certain individuals, parties to that dispute, have departed from the practice of their religion, is substantial, and raises an issue of public importance which is of sufficient weight as to merit the attention of this Court. We urge this Court to note probable jurisdiction and to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX A.

OPINION AND DECISION OF THE COURT OF COMMON PLEAS.

(August 12, 1966.)

MATZ, J.:

In the petition plaintiff alleges that it is an unincorporated association in existence continuously since 1918 under the name of Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, composed of dues-paying members engaged in common religious worship.

It is then alleged that the defendants are not members in good standing of plaintiff association; that plaintiff, by the use of the name St. Demetrius Church over a period of years, has acquired a property right in said name in Akron and surrounding area; and that the defendants have set themselves up as St. Demetrius Church Parishioners and held religious services as such, and generally assume to be and constituted themselves as St. Demetrius Church, thereby appropriating to its own use the name of the association and have generally operated in the name of St. Demetrius Church; and by reason thereof, the general public has been led into believing it is dealing with an authorized committee of the plaintiff church. The prayer is that the defendants and all others to whom notice of such injunction may come be enjoined in any way from using the name 'St. Demetrius' or 'St. Demetrius Church' or 'St. Demetrius Church Parishioners' in connection with any concerted activities of any nature without the prior approval of the plaintiff.

Undoubtedly, the Courts will protect the name and good will of an association whether religious or otherwise against a person using said name unauthorized.

In the amended answer and cross petition, the defendants allege that they and their associates are, in fact, the

Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, and that the plaintiff is not the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, but

> "is a schismatic group, unlawfully and wrongfully ignoring and disobeying the orders and directives of said Church and wrongfully and unlawfully using the name of said congregation in this action which they have no capacity or right to prosecute; nor is the common religious worship in which said group is engaged the worship of the Serbian Orthodox Church."

The second paragraph of the amended answer and cross petition reads as follows:

> "The Serbian Orthodox Church, at all times referred to in the petition, was and is an hierarchical church, governed by Bishops and therefore Episcopal, having in order of the hierarchy and hierarchical authority, at its head, in supreme authority, its Patriarch, its Holy Bishops Assembly consisting of all the Bishops of the Church with the Patriarch as its presiding officer, and its Holy Bishops' Synod, elected by the Holy Bishops Assembly, the highest executive body of the Church, also with the Patriarch as its presiding officer, all having their seat in Belgrade, Yugoslavia, with their related councils, tribunals and committees; having, next in order of the hierarchy and subject to the authorities above mentioned, the Dioceses of the Church, being constituent parts of the Church situated in various geographical divisions and territories, each with one of the Bishops of the Church at its head and with its councils, tribunals and committees; and next, in the order of the hierarchy and of hierarchical authority, having the various Church-School Congregations or Church Congregations within the territory of each Diocese, constituting the membership of the Diocese and subject to its authority and the higher authorities of the

Hierarchy, being constituent parts of the Diocese and of the Church, with their respective officers, committees, organs and individual members."

The *crux* of this case is probably stated in the fifth paragraph of the answer and cross petition as follows:

"The Serbian Orthodox Church Congregation of St. Demetrius, Akron, Ohio, this being the official name of the Church-School Congregation situated in Akron as provided in its By-laws, has been an integral part of the Serbian Orthodox Diocese in the United States of North America and Canada from the establishment of that Diocese in 1927 until the creating of three Dioceses in its stead by the Holy Bishops Assembly of the Serbian Orthodox Church in May of 1963, and since then has been a part of the Eastern American and Canadian Diocese, also called the Middle Eastern and Canadian Diocese, of which Bishop Stefan is now Bishop, being that one of the three Dioceses then created instead of said former large Diocese of the United States of North America and Canada, the community of said Serbian Orthodox Congregation of St. Demetrius of Akron, Ohio, being situated within the geographical limits of said Diocese, all as hereinafter alleged."

There is then alleged various paragraphs or articles of the Constitution of the Serbian Eastern Orthodox Church, Constitution of the Diocese, and the Constitution of the St. Demetrius Church. It is further alleged that on June 21, 1919, said Serbian Orthodox Church Congregation of St. Demetrius organized a corporation under the name of the Servian Orthodox Church of Akron, Ohio, for the purpose of holding the real estate of said church, and that all the real estate of the Church was conveyed by its trustees to said corporation. It is then alleged that through its duly constituted body, the Serbian Eastern Orthodox Church set aside the original diocese covering the United

States and Canada and in its place established three new diocese.

Without further referring to the pleadings of the defendants, it is suffice to say that the issue joined by these pleadings is whether or not the plaintiffs and their associates constitute the St. Demetrius Church or whether the defendants and their associates constitute such Church. That there is a schism of the church is quite apparent from the evidence. The plaintiffs and their associates claim that plaintiff church is an integral part of the original diocese in the United States of North America and Canada, and that the defendants and their associates are the schismatic group. The defendants, on the other hand, claim that the Serbian Eastern Orthodox Church with its see in Belgrade, Yugoslavia, is the head of the Church and that they and their associates constitute the true Church belonging to the hierarchy with its see in Belgrade.

In 1957, Time, Inc. published *The World's Great Religions*. Commencing on page 245 is a brief history of the Eastern Orthodox Churches.

> "The Orthodox churches began in the Holy Land before there were any Christians in Rome. The New Testament was first written in Greek (the original language of the Orthodoxy) and most of the early church councils were Orthodox in character. Like Roman Catholicism, Orthodoxy (from the Greek 'orthos' and 'doxa,' "true belief") considers that it was founded directly by Jesus. For Christianity's first thousand years the two together comprised the One, Holy, Catholic and Apostolic Church. But politico-religious cracks in the unity appeared early. For a time the tides ran eastward. After Constantine shifted the Roman Empire's throne to Constantinople in 330 A.D., the two great centers of Christianity—Rome headed by its Pope and Constantinople headed by

its Patriarch—were competing for converts, dioceses and power.

Rome never surrendered its claims to primacy and after Islam conquered much Orthodox territory, the Papacy felt strong enough to try to enforce these claims. The climactic effort came in 1054 after the Patriarch of Constantinople had warned South Italy's bishops, over whom he claimed jurisdiction, against what he considered Roman errors in doctrine and discipline, including clerical celibacy and the use of unleavened bread for Communion. Most of all, he objected to Rome's adding the words 'and the Son' to the phrase in the Nicene Creed: 'in the Holy Ghost * * * who proceedeth from the Father.' Pope Leo IX replied that Rome must remain supreme 'over the Churches of God throughout the world,' and sent legates to Constantinople who, on July 16, 1054, slapped on the altar of Haghia Sophia Church a bull excommunicating the Patriarch and all his adherents. The Patriarch in turn excommunicated the Pope. Thus began the Great Schism between two Catholic churches. The shameful sack of Christian Constantinople by the Crusaders in 1204 made reconciliation unthinkable. Today Orthodoxy considers Rome heretical; Rome considers Orthodoxy schismatic.

The Orthodox Church historically has been a tool of government. During the centuries after the fall of Constantinople in 1453 when the Ottoman Empire ruled most of Orthodoxy's area, the Turks dealt with their Christian subjects through Orthodox prelates, who combining temporal and spiritual leadership, had to mix politics with religion. In Russia, which got its alphabet along with its religion from Orthodox missions, the czars long dominated Orthodoxy. Peter the Great even abolished the Moscow patriarchate to make the czar head of the church.

After the Russian empire ended, the Communists persecuted the Russian church. Because of its

continued hold on the masses, the Kremlin allowed a new Moscow Patriarch to be chosen in 1943. Since World War II the Russian church has again been an arm of the Soviet state, which permits the clergy to flourish on fees and even to print Bibles in Russian, some of them for export. The Russian Orthodox Church claims 50 million adherents, served by 35,000 priests in 20,000 parishes.

Eastern Orthodoxy is now a loose federation including the four historic patriarchates—Constantinople, Jerusalem, Antioch, Alexandria—and the self-governing Orthodox churches of Russia, Yugoslavia, Romania, Greece, Bulgaria, Poland, Georgia, Albania, Cyprus, Sinai, Finland, Estonia, Latvia and Czechoslovakia. The U. S. branches of most of these are also self-governing, but observe the tradition that the Patriarch of Constantinople (the city's old name is still used) has primacy; they look to him for spiritual guidance. Both church doctrine and practice are nearly identical everywhere, though the ritual's language may vary with the church's national origin.

Three of the patriarchates—Jerusalem, Antioch and Alexandria—are now little more than relics. Moscow has been trying to subordinate Constantinople, and a conflict now rages within Orthodoxy between those who oppose and those who accept Communist control of their church."

"As the Serbians immigrated to the Western Hemisphere, the immigrants established churches, orthodox in character, and maintained their Serbian customs and traditions. They were self-governing bodies, but were gathered into a loose federation as far back as 1905, when the Archimandrite Sebastian Dabovitch established his headquarters in Chicago as the administrator of the Servian Orthodox Church in North America, under the jurisdiction of the Russian archbishop of New York City."

(*The New Schaff-Herzog Encyclopedia of Religious Knowledge,* Vol. X, p. 374.)

The Serbs in Akron and vicinity, about the year 1918, founded a Serbian church known as the Serbian Orthodox Church Congregation of Akron, Ohio. On June 21, 1919, the congregation caused a corporation to be founded under the name of Serbian Orthodox Church of Akron, Ohio, the purpose being expressed in the articles as follows (Mutual Exhibit A):

> "for the purpose of providing a place of worship for its members and conducting the same under suitable religious leadership *according to the rules, regulations and customs of the Servian Orthodox Church;* for promoting the cause of the Christian religion; for receiving, holding and disbersing gifts, bequests and funds from any source; *for owning and maintaining suitable real estate and erecting and maintaining thereon suitable buildings,* and also for maintaining a cemetery and for doing any and all things incident to the above." (Emphasis supplied.)

All real estate of the church was conveyed to said corporation.

Along about this time, a club house was built on this premises where church services were held until about the year 1931 when the present church building was built on the premises held by said corporation.

Shortly after World War I, apparently as a result of the Communist influence in Russia, a movement was started to transfer these Serbian churches from the Russian jurisdiction to the Serbian Eastern Orthodox Church. A priest by the name of Mardarij Uskokovic was commissioned to organize the Serbian churches in North America into a Serbian Eastern Orthodox Diocese.

At a meeting which was called by this priest on May 29, 1927, at Libertyville, Illinois, the diocese was organized as a corporation and a Constitution adopted. Apparently at that time there was complete unity of agree-

ment between the newly organized diocese and the Serbian Eastern Orthodox Hierarchy. The Constitution was approved by the Holy Bishops Assembly and the Holy Synod in Belgrade.

By the Constitution, the American and Canadian Diocese formally dropped its Russian affiliation and became a part of the Serbian Patriarchy at Belgrade. Said priest had theretofore been appointed Bishop of the newly created diocese by the Holy Bishops Assembly and by King Alexander by instrument dated April 25, 1926, adopting the name of Bishop Mardary.

The Articles of this corporation were permitted to lapse and the diocese was reincorporated under the laws of the State of Illinois on May 15, 1935, adopting the name of Serbian Eastern Orthodox Diocese for the United States of America and Canada.

In 1939, one Dionisije was appointed as Bishop of the Diocese, which was confirmed by King Peter on January 18, 1940.

The Constitution of the diocese as published by the Diocesan Administration of America-Canada in 1939 was introduced in evidence as Defendant's Exhibit TT. Articles 1, 2, 3, & 4 of the Constitution provide as follows:

> "1. The Serbian Orthodox Diocese in the Northern States of America and Canada is *considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.*
>
> "2. All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which must be formulated with regard to local circum-

stances in accordance with ecclesiastical and judicial principles.

"3. The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location *enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiencies, through its organs,* but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada.

"4. The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church-school Congregations-Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states and which fall under the spiritual, executive, ecclesiastical-judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-school Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories must be in ecclesiastical-canonical bond with this Diocese and recognize its authority and power." (Emphasis supplied.)

Article 9 provides as follows:

"9. The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate."

Article 10 sets forth the duties of the Bishop and provides in part as follows:

"h) to execute all canonical orders of the Holy Assembly of Bishops;

"l) to decide questions of degrees in relationships and to, within the canonical limitations and the decisions of the Holy Bishop's Assembly, render dispensations to related persons to wed;

"p) to submit to the Holy Bishop's Assembly of the Serbian Patriarchate an annual report of his archipastoral activities;"

Article 12 reads as follows:

"The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.

"Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.

"Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organs are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interests of the church, he shall halt the execution of such decision and submit the matter for rediscussion and re-decision. If he again is not in accordance with the re-decision as reconsidered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod."

Article 13 provides as follows:

"13. In the event of illness or absence, the Diocesan Bishop assigns his own substitute and designates his authority. When the seat of the Diocese Bishop is vacated, the administration of the widowed diocese is upheld in all her spiritual and administrative matters by the Ecclesiastical Court and the Diocesan Council until the appointment of an administrator, which appointment is made by the Serbian Patriarch with the Holy Pontifical Synod."

Article 15 provides as follows:

"The Diocesan Assembly is the main legislative and controlling body in the Diocese and represents *the entire Orthodox Serbs in the United States of America and Canada.*"

Article 23 provides as follows:

"The Diocesan Assembly upon being duly constituted, performs the following:

* * *

(8) decides on changes and amendments to the Constitution with the approval of the Holy Bishops Assembly of the Serbian Patriarchate."

Article 68 provides as follows:

"Each Church-School Congregation is considered an *integral part of the Serbian Orthodox Diocese in the Northern United States of America and Canada* and as such is subject to all the statutes of this Constitution, church canons, and other regulations, rules and orders of the Diocesan authorities headed by the Diocesan Bishop."

Plaintiff's Exhibit 20-A is the "Constitution and By-Laws of the Serbian Orthodox Church School Congregation of Akron, Ohio, Founded 1918," which was adopted

December 28, 1924 by the congregation. Articles 1 and 2 of the Constitution read as follows:

> "1. According to the wishes of the majority of Serbs in Akron, a Serbian Church Congregation is hereby founded under the name Serbian Orthodox Church School Congregation in Akron, Ohio. The main seat of this Congregation is Akron, Ohio."
>
> "2. Aim—The aim of the Serbian Orthodox Church School Congregation of Akron is to morally and instructively educate its members and the Serbian youth the Serbian faith; to spread and foster Orthodoxy among the Serbian people in this colony and its environs; to maintain the Serbian primary school and to do all that is of value and needed for our people morally and spiritually."

Article 40 reads as follows:

> "The Serbian Church School Congregation in Akron is a *part of the Serbian Orthodox Patriarchate and of the Serbian Orthodox Diocese in America.* The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation."

Plaintiff's Exhibit 13 is apparently a later edition of the By-laws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio, and Article 1 reads as follows:

> "The name of the Serbian Church School Congregation of Akron is: Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio.
>
> "The seat of the Congregation is in the city of Akron, State of Ohio, United States of America. The Congregation is an *integral part of the Serbian Orthodox Diocese of the United States and Canada.* In accordance with Articles 4 and 68 of the Diocesan Constitution, the Congregation submits itself to the regulations of the Diocese and directives of the Diocesan

authorities. The official language of the church school congregation is American and Serbian."

Defendant's Exhibit L is the Constitution of the Serbian Orthodox Church, Second Edition of the Holy Synod of Bishops, as revised in 1957. Article 1 provides as follows:

"The Serbian Orthodox Church is one, undivided, and autocephalous. The Church confesses publicly its religious teachings, performs publicly its religious services, and governs and regulates independently all its religious affairs.

"Serbian Orthodox Church maintains dogmatic and canonical unity with all other Orthodox Churches."

Article 2 provides:

"The Serbian Orthodox Church has a rank of Patriarchate."

Article 5 provides:

"The legal persons in the Serbian Orthodox Church are these: Patriarchate, dioceses, church congregations, monasteries, foundations, independent institutions or such funds, and according to the designation, individual temples."

Article 8 provides:

"The order of the Serbian Orthodox Church is ecclesiastical-hierarchical and ecclesiastical-administrative.

"Ecclesiastical authority, spiritual, church-disciplinal and church-judicial, in accordance with the canons and the order of the Serbian Orthodox Church belongs to the hierarchy solely. That authority the hierarchy exercises through its hierarchical representatives and organs.

"The Pontifical authority with the clergy and the laity through its administrative representatives and organs orders and manages matters pertaining to the properties, bequests, (foundations), funds as well as to other matters foreseen by this Constitution.

"Property right interests of the Church before the civil authorities and before the persons are represented by the ecclesiastical organs which are designated by this Constitution."

Article 10:

"In the Serbian Orthodox Church there are the church-hierarchical and administrative authorities, bodies and organs:

1. Patriarch, Holy Assembly of Bishops and Holy Synod of Bishops, the Supreme Ecclesiastical Court, Patriarchal Council and Patriarchal Executive Board;

2. Diocesan Bishop, Diocesan Ecclesiastical Court, Diocesan Council and Diocesan Executive Board;

3. Bishop's District Deputy;

4. Pastor of the Parish;

5. Church-congregational Council and Church congregational Executive Board;

6. Abbot and the Monastery Brotherhood."

Article 12:

"The Serbian Orthodox Church is episcopal. Its principal administrative division is into dioceses, both in regard to church-hierarchical and church-administrative aspect."

Article 13:

"At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its supreme head. The title of the Patriarch is: The Archbishop of Pech, Metro-

politan of Belgrad and Karlovci and the Serbian Patriarch.

"At the head of each Diocese there is the Diocesan Bishop as its immediate head. He is, according to the church canonical regulations, the chief representative and leader of all church-spiritual life and church order in the diocese and he directs the diocese assisted by his clergy and people."

Article 14 provides:

"These are the Dioceses in the Serbian Orthodox Church:"

and then sets forth 24 dioceses, all within the territorial limits of Yugoslavia.

Article 15:

"Besides the Dioceses enumerated in the previous article, in the matters spiritual and hierarchical, to the Serbian Orthodox Church also belong these dioceses which are abroad:

"1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois;"

(and setting forth five other dioceses)

Article 16:

"The decisions concerning the creation, name, abolition, districting and the sees of the Dioceses, and (concerning) the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops *in accord with the Patriarchal Council.*"

Article 17:

"A Diocese, in the church-administration sense, is comprised of Dioeesan Districts, church congregations, parishes and monasteries."

Article 18:

"The Diocesan District is comprised of a fixed number of church congregations and parishes under the supervision of a Bishop's District Deputy."

Article 20:

"A church congregation is comprised of adherents of the Serbian Orthodox Church with a priest on a specified territory, which may include one or more localities and having as its aim the caring of the needs for the church.

"The decisions about founding of a church congregation is made by the Diocesan Bishop in agreement with the Ecclesiastical Church and the Diocesan Executive Committee, of which he informs the Holy Synod of Bishops and the Patriarchal Executive Committee."

Article 69:

"The Holy Assembly of Bishops, whose function is defined in Article 57 of this Constitution:

* * * * *

18. regulates and keeps an official list of candidates for the rank of bishop, and elects from among these worthy persons for diocesan and vicar bishops;

* * * * *

"27. Adjudges:

(A) In first and in final instances:

(a) disagreements between Bishops and the Holy Synod, and between the Bishops and the Patriarch;

(b) canonical offenses of the Patriarch;

(B) In the second and final instance:

All matters which the Holy Synod of Bishops judged in the first instance;"

In Article 70, which proclaims the jurisdiction of the Holy Synod of Bishops, under Division 35,

"35. Judges:

(A) In the first instance:

(a) discord among the bishops;

(b) canonical offenses of a bishop;"

Article 81, et seq., describes and sets forth the composition and duties and jurisdiction of the Patriarchal Council.

Article 104:

"For a Diocesan and Suffragan Bishop can be elected that person:

(a) who fulfills all canonical conditions forseen for the rank of a Bishop in the Orthodox Church;

"(b) who has regularly graduated from an Orthodox Spiritual Academy of an Orthodox Theological Faculty (Graduate School of Theology);

"(c) who is a citizen of Yugoslavia; this condition does not apply for Bishops of Serbian Orthodox Dioceses abroad;

"(d) who by his zealous church service, and by his exemplary life and dedicated work for the good of the Church and people has acquired general respect and who has evidenced the ability for the position of a Bishop."

Article 111:

"The Holy Assembly of Bishops may remove the Diocesan Bishop only by a canonical verdict, or release him upon proof of incapacity or by establishing a proof of one of the conditions forseen in Article 104, as well as upon the ground of a justified application for pension."

The Holy Episcopal of the Serbian Orthodox Church in Belgrade, purporting to act on the request of the Serbian National Assembly of the diocese and a request of Bishop Dionisije for the appointment of more bishops to handle the expanding work of this diocese, created three new dioceses in the place of the Serbian Orthodox Diocese of the United States of North America and Canada:

(1) The Middle American Diocese with Bishop Dionisije as its head;

(2) a Western Diocese and

(3) The Eastern American-Canadian Diocese with its See at Detroit.

On the same day, May 10, 1963, said Council suspended Bishop Dionisije from priestly functions and directed him to relinquish the office of Bishop of the Diocese to a newly appointed administrator.

The territory of the Eastern Diocese included the church at Akron, and on May 17, 1963, one Bishop Stefan was appointed Bishop of the Eastern American-Canadian Diocese.

Charges were brought by the Holy Synod against Bishop Dionisije. The acts for which he was indicted by the Holy Synod are as follows:

"For breaking his Episcopal oath and for refusing to submit to the decisions of the highest Church authorities—the Holy Episcopal Council and Synod of the Serbian Orthodox Church;

"For his refusal to participate orally and directly in an investigation before the Investigating Committee of the Holy Episcopal Synod, concerning the charges submitted against him;

"For officiating in Church ceremonies and for performing the duties of diocesan bishop after having been indicted and suspended from the performance

of Church ceremonies, and relieved of the duties of diocesan bishop;

"For accepting clerics who had no canonical release, as well as persons who were under suspension from the performance of Church ceremonies, and for entrusting them with parochial duties;

"For committing wrong-doings of a material nature and for conducting himself in a manner unbecoming priestly rank and position;

"For ordaining and bestowing ecclesiastical ranks of honor on such persons who, according to the canons do not possess the necessary qualifications for ordination; and

"For proclaiming the Serbian Orthodox Diocese of America and Canada fully autonomous and separating it from the mother, Serbian Orthodox Church, at the so-called 'Church National Assembly,' held November 13th and 14th, 1963.

"For these offenses, the prosecutor for the Serbian Orthodox Church asked that Bishop Dionisije Milivojevich be divested of both his episcopal and monastic ranks."

On the 15th day of March, 1964, the Holy Episcopal Council of the Serbian Orthodox Church pronounced judgment finding him guilty of the acts charged and defrocking him as a Bishop.

Following the decision of the Holy Council of Bishops establishing the three new diocese, the Church National Assembly of the diocese held a meeting in August in which a resolution was adopted declaring the division of the diocese into three diocese unlawful and unconstitutional and refused to recognize the suspension of Bishop Dionisije. On September 3, 1963, the Holy Bishops Synod of Belgrade declared the Church National Assembly held in August was unlawful and its resolutions and acts invalid.

At a meeting of the Church National Assembly held November 12, 13 and 14, 1963, amendments to the Constitution of the original diocese were adopted which, in substance, declared its autonomy and its freedom of all control of the patriarch in Belgrade.

On July 7, 1963, the plaintiff congregation adopted a resolution (Defendant's Exhibit 23-B) which reads as follows:

> "1. The membership considers that the Church-canonical ties between Serbian Orthodox Church in America and Canada and the Serbian patriarchate in Belgrade shall and must be maintained in order to secure dogmatic and canonical unity and to maintain, for the future the only, indivisible and autocephalous Serbian Orthodox Church (Article 1 of the Constitution of the Serbian Church).
>
> "2. The membership furthermore believes that, in the spirit of Article 13 of the Constitution of the Serbian Orthodox Church and of the Article 3 of the Constitution of the Serbian Orthodox Diocese for the United States of America and Canada, the Serbian Orthodox Diocese in America and Canada must enjoy full administrative freedom in the future, in order to be able to govern its affairs independently and by itself.
>
> "3. The membership considers that, the political structural of Yugoslavia with the Communistic system of Josip Broz-Teto make impossible free and independent work of the Serbian Church in that country and forces all Church ecclesiastical and administrative authority to an unconditional submissiveness and to unvoluntary cooperation with the godless Communism.
>
> "4. In connection with this the membership believes that the last decisions of the Holy Synod and the Holy Assembly of the bishops relative to the

division of the Serbian Orthodox Diocese in America and Canada and to the suspension of the Bishop Dionisije of Politically inspired. This seems to be more evident because of the fact that the decision relative to the division of the Diocese was decreed at the same time when the head of the Serbian Church in America, His Grace Bishop Dionisija ,was legally deprived any opportunity to represent the Serbian people in America and Canada who he represents for the past 23 years.

"5. The political background of these decisions from Belgrade were specifically emphasized by the factor that the Very Rev. Stevan Lastavica was selected to be a new Bishop; a man totally completely unknown to the Serbian people in America and Canada; a man with no merit for the Serbian Church in this great lands and a man whose past does not allow such high up ranking.

"6. In a clear difference of opinion and in many groupings which took place after this important decision of our Holy Fathers from Belgrade were taken our membership foresees a very serious danger for our Holy Church in America and Canada and is afraid that the final resolves of these unjustified decisions may be very unpleasant for the future life and work of our church. In regard to this we hereby issue an appeal to all reasonable Serbs, both priest and laymen, to always consider our example in Akron and to gain wisdom from our experience.

"7. Finally, the membership considers that the case of his Grace Bishop Dionisija should and must be considered the way he, Bishop Dionisija, has publically proposed.

"The way by which this case was announced in the American community clearly demonstrates the political background of that decision and, judged by our ideal of freedom, represents a political liquidation equalling a political crime.

"As long as the case of His Grace Bishop Dionisija is not justly resolved the membership of the Church School congregation of the St. Demetrius Church in Akron consider, in regard to Article 5 of the constitution of the Serbian Orthodox Diocese of the United States of America and Canada, the Diocesan counsel (Plenum) as the only legal authority and declare itself hereby to accept and carry out the decision of that counsel."

Shortly after the forming of the new diocese, the President of plaintiff congregation sent several form letters, apparently to applicants for membership in the church, one of which is Defendant's Exhibit 3-i and which reads as follows:

"Your application for membership in the St. Demetrius Church Congregation has not been approved by the Executive Board.

"Evidence has been submitted to the Board that you have signed serious and unfounded charges against the Congregation and the Executive Board.

"It has also come to our attention that you are desirous of removing this Church from American Jurisdiction and placing it directly under the jurisdiction of Yugoslavian authorities.

"We, who are striving to support this Church and to raise our children in the Faith of their Fathers, consider these views as being detrimental to our Church and the Congregation.

"If your name has been falsely used on the document expressing the above charges, please indicate this by a letter to the Secretary of the Congregation, Mr. V. Jovich.

Albert Dan Davis,
President."

The letter to the choir and all the other evidence in the case indicates that plaintiff and those in sympathy with them are intolerant with the members professing adherence to the Mother Church as against adherence to the church headed by Dionisije.

Under this statement of facts, the Court is required to decide which of the two contending parties is the true church. Probably the leading case on that subject is the case of *Watson vs. Jones,* 80 U. S. 679, 20 L. ed. 666 which involves a schism in the Presbyterian Church. On page 674, the Court divides the churches on this subject as follows:

> "The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.
>
> "1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support or spread of some specific form of religious doctrine or belief.
>
> "2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.
>
> "3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical

tribunals with a general and ultimate power of control more or less complete in some supreme judicatory over the whole membership of that general organization."

And on page 676 as follows:

"But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

"It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

"The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and *so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property.* In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are

in the Presbyterian system of ecclesiastical government, in regular succession, the Presbytery over the session or local church, the Synod over the Presbytery, and the general assembly over all. These are called, in the language of the church organs, 'judicatories', and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases."

There is a long annotation on the subject in 24 LRA (N. S.), and on page 696, the author of the annotation discusses the question of the identity of the organization which is the successor of the schismatic organization and we quote here as follows:

"While the opinion in *Watson v. Jones* in terms makes the question of identity the criterion in cases of the second class, and the action or decision of the supreme church judicatory the criterion in cases of the third class, it is apparent that, to the extent that the principles laid down in this case are accepted and followed, the question for the civil courts in the determination of property rights, whether the society is of the second or third class, is fundamentally and ultimately one of identity, not of individuals, but of organizations. In other words, when, as is almost invariably true of the cases cited in this note, a controversy over property rights arises out of a schism or division in a local society, whether of the second or of the third class, the civil court, for the purposes of the property right involved, and for that purpose only, is to ascertain *which of the rival factions is the true representative and successor or continuation of that local society as it existed prior to the schism or division. In general that question is to be determined by ascertaining which of the two factions adheres to or is sanctioned by the governing body of the society.* The result of the application of that criterion will, of course, depend very largely on the question whether

> the society belongs to the second or third class, since, as already stated, the governing body of a society of the second class is ordinarily the majority of the society itself, so that the application of the criterion in this class of cases calls for adherence to or sanction by the majority of the local society, whereas the governing body of a local society of the third class is generally some external organization, so that the application of the criterion in this class of cases calls for adherence to or sanction by such external organization, *irrespective of the action of the majority of the local body.* Identity, however, is the criterion in either case, in the absence of an express trust."

From the foregoing statement of facts, it is quite clear that the plaintiff organization, or rather, the members thereof, were in charge and in control of the church and possession of its real estate, and the present officers were elected by the members thereof. However, it is necessary to resolve this lawsuit to determine which of the contending organizations is the true successor to the Serbian Eastern Orthodox Church of St. Demetrius.

The sore spot of this lawsuit, and probably the focal point, is the status of former Bishop Dionisije. Charges were filed by the Holy Synod against Dionisije involving moral turpitude, dishonesty and unprofessional conduct in his office. An investigation was made of these charges, involving a conference with the accused. An indictment was drawn up by the Holy Synod. He was given an opportunity of presenting a defense but, instead of doing so, he demanded a delay of six months within which to answer. The Holy Bishops Assembly, which is the supreme ecclesiastical body in the Serbian Eastern Orthodox Church, found the Bishop guilty as charged and removed him from the rank of Bishop of the Serbian Eastern Orthodox Church. There can be no question of the legality and

the finality of this decision of the Holy Bishops Assembly, and this Court is not authorized to reverse that decision. In fact, the entire record indicates that Dionisije ignored both the trial and the decision. He responded to the charges brought against him by calling a meeting of the Diocesan Council which, through his leadership, declared its complete autonomy and separation from the patriarchy of the Serbian Eastern Orthodox Church.

Plaintiff members of the St. Demetrius church were in good faith in sympathy with former Bishop Dionisije, and on July 7, 1963, a resolution above referred to as Plaintiff's Exhibit 23-B was adopted. While the resolution affirms that the "canonical ties between the Serbian Orthodox Church in America and Canada and the Serbian Patriarchate in Belgrade shall and must be maintained in order to secure dogmatic and canonical unity," and further recites that the division of the former diocese into three new diocese was politically inspired, meaning the Communist regime in Yugoslavia, [it] finally declares that as long as the case of Bishop Dionisije is not "justly resolved, the membership of the Church School Congregation" regards the Serbian Orthodox Diocese of the United States and Canada as the only legal authority.

The letters to the applicants for membership and the letter to the church choir indicates that the plaintiff and its associates are rebellious against the removal of Dionisije from the order of Bishops and are still following him as their bishop. They have, in effect, repudiated the Patriarchy of the Serbian Eastern Orthodox Church. It is the opinion of the Court that Dionisije is no longer a Bishop of the Serbian Eastern Orthodox Church and, in fact, has no standing in the canonical Orthodox churches. This is evidenced by the letters introduced in evidence from the various patriarchs, including the Supreme Patriarch Athenagoras.

Plaintiffs assert that the action of the Holy Bishops Assembly, in dividing the old diocese into three new diocese, is in violation of the Constitution of the Diocese and the Constitution of the Mother Church.

The Court of Appeals of Illinois so held in a case involving the property of the old diocese. As we understand the opinion or decision, that Court held that Article 16 did not apply to the diocese named in Article 15 but only applied to the diocese named in Article 14. The position of the plaintiff in the instant case, as we understand it, is that the action of the Holy Bishops Assembly, in dividing the original diocese, was, in effect, an amendment of the diocesan constitution which it had no power to do and further, that it was void and of no effect because the consent of the Patriarchal Council was not obtained.

The evidence shows that the Patriarchal Council has not met for a number of years and that the work of the Patriarchal Council has been, in effect, taken over by the Assembly of Bishops; and since 1937, that procedure has been carried out with the knowledge and consent of all officials of the diocese.

If the Holy Bishops Assembly had the right under Article 16 to divide the original diocese, then it could hardly be said that its action would, in effect, be an amendment of the Diocesan Constitution since the two constitutions must be read together in determining that question.

However, it is not necessary for the Court to decide the validity of the division of the diocese and the establishment of three new diocese. The Mother Church has decided and declared, in effect, that the old diocese does not exist. The diocese, under the leadership of former Bishop Dionisije, has declared that it is no longer part of the Serbian Patriarchy.

This church was organized, as the evidence discloses, as a church of the Serbian Patriarchy. It seems to have been organized about the year 1918. It organized and formed a corporation for the sole purpose of taking title to its real estate, and the Articles of Incorporation include a virtual declaration of trust that said property was held "according to the rules, regulations and customs of the Serbian Orthodox Church."

The by-laws of the church congregation as revised on December 28, 1924, at which time the new diocese was being formed, provides in Article 40 as follows:

> "The Serbian Church School Congregation in Akron, Ohio, is part of the Serbian Orthodox Patriarchy and of the Serbian Orthodox Diocese in America."

In the 1960 revision of the by-laws, the name is changed to Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, and recites that "the congregation is an integral part of the Serbian Orthodox Diocese of the United States and Canada." That the Serbian Eastern Orthodox Church is a hierarchy is conceded by both parties to this lawsuit and, in fact, the Constitution of the diocese and the Patriarchy spell it out in detail. The Constitution of the Patriarchy, Article 5, recites the order of the various organizations of the church and lists them, including the local church congregation. The diocese itself, as shown by its Constitution, is subservient to the Patriarchy. The Articles of the holding corporation and the original by-laws of the congregation indicate clearly that they were organized and established as part of the Serbian Eastern Orthodox Church and nothing has happened to change that relationship.

Plaintiffs and those in sympathy with them are rebelling against the patriarchy and are following the former bishop who is not a bishop and are considering themselves

a part of a church which is not a part of the Orthodox church system and not a part of the Eastern Orthodox Church. Consequently, the evidence in this case identifies the defendants and those in association with them as the successors to the church and who maintain and profess its submission to the Serbian Eastern Orthodox Church.

Holding these views, the Court is of the opinion that the temporary restraining order heretofore allowed should be and the same is hereby dissolved and the petition of the plaintiffs is dismissed.

Coming now to the prayer of the cross petition, the Court finds that the defendants and those in sympathy with them constitute the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio and that the plaintiffs are unlawfully withholding from said defendants and those in sympathy with them the use of the church property and that the defendants and those in sympathy with them as such church congregation are entitled to possession of said properties.

Counsel for the defendant will prepare and submit an entry in conformity with this opinion.

If an appeal is taken from this decision, the appeal bond will be fixed at One Thousand Dollars ($1,000.00).

This case has been well, earnestly and resourcefully tried by Counsel on both sides, and after trial, Counsel on both sides have furnished the Court excellent and exhaustive briefs; and the Court feels that the Court has before it all the available evidence and all of the legal authorities on the subject which have been most helpful to the Court.

JOURNAL ENTRY OF THE COURT OF COMMON PLEAS.

(Filed in Court of Common Pleas October 28, 1966.)

This cause came on to be heard before the Honorable Judge Edmund L. Matz, sitting in the Summit County Court of Common Pleas by way of assignment, upon the pleadings and the evidence and thereupon the Court makes the following findings and orders:

1. That the Serbian Orthodox Church is an hierarchical church having its see in Belgrade, Yugoslavia.

2. That the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio, was at its inception organized for the purpose of worshipping under the canons, dogmas, customs and usages of said Serbian Orthodox Church and was at its commencement and is now an integral part thereof and that nothing has occurred to change said relationship between the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and the said Serbian Orthodox Church.

3. That after the formation of said Serbian Orthodox Church of St. Demetrius of Akron, Ohio, a corporation was organized under the laws of the State of Ohio, which corporation was known as the "Servian Orthodox Church of Akron, Ohio" and that said corporation was organized for the purpose of holding all of the real estate of the church and that all of the real estate belonging to the church was conveyed by the trustees of the said Serbian Orthodox Church of St. Demetrius Church of Akron, Ohio, to said corporation for the purposes set forth in the purpose clause of said corporation, which are as follows:

> "For the purpose of providing a place of worship for its members and conducting the same under suitable religious leadership according to the rules, regulations and customs of the Servian Orthodox Church;

for promoting the cause of Christian religion; for receiving, holding and disbursing gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining thereon suitable buildings and also for maintaining a cemetery and for doing any and all things incident to the above."

and that said corporation holds all of said property of the said Serbian Orthodox Church of St. Demetrius of Akron, Ohio, in trust for the purposes set forth in said purpose clause to be used as an integral part of said Serbian Orthodox Church, said real estate being described as follows:

PARCEL 1:

Situated in the City of Akron, County of Summit and State of Ohio and known as being part of Sub-lots Nos. 57 and 58 in the 2nd Re-Allotment made for Edward B. Bruch of part of the Miller and Long Allotment of part of original Coventry Township Lot No. 20, Tract No. 9, as shown by the recorded plat in Volume 8 of Maps, Page 37 of Summit County Records and bounded and described as follows: Beginning at an iron pipe in the Southerly line of Lake Street and the Northerly line of said Lot No. 58 which is 40.00 feet Easterly from the Northwesterly corner of Lot No. 59 of said Allotment; thence South 2° 06′ 30″ West 162.85 feet to an iron pipe in the Southerly line of said Lot No. 58; thence easterly along the southerly line of Lots Nos. 58 and 57, 36.70 feet to an iron pipe; thence North 2° 07′ East 162.85 feet to an iron pipe in the Southerly line of Lake Street and the Northerly line of Lot No. 57; thence Westerly along the Southerly line of Lake Street and the Northerly line of Lots Nos. 57 and 58, 36.72 feet to the place of beginning, be the same more or less, but subject to all legal highways.

PARCEL 2:

Situated in the City of Akron, County of Summit and State of Ohio, and known as being part of Sub-Lot No. 57 in the 2nd Re-Allotment made for Edward B. Bruch of part of the Miller and Long Allotment of part of original Coventry Township Lot No. 20, Tract No. 9, as shown by the recorded plat in Volume 8 of Maps, Page 37 of Summit County Records, bounded and described as follows:

Beginning at an iron pipe at the Northeasterly corner of said sub-Lot No. 57; thence South 2° 07′ 30″ West along the Easterly line of said Sub-Lot, 162.85 feet to an iron pipe at the Southerly corner thereof; thence Westerly along the Southerly line of said Sub-Lot 36.70 feet to an iron pipe; thence North 2° 07′ East 162.85 feet to an iron pipe in the Southerly line of Lake Street and the Northerly line of said Sub-Lot No. 57; thence Easterly along the Southerly line of Lake Street 36.72 feet to the place of beginning, be the same more or less but subject to all legal highways.

PARCEL 3:

Situated in the City of Akron, County of Summit and State of Ohio and known as being Sub-Lots Nos. 56 and 64 in the 2nd Re-Allotment made for Edward B. Bruch of part of the Miller and Long Allotment of part of original Coventry Township Lot No. 20, Tract No. 9, as shown by the recorded plat in Volume 8 of Maps, Page 37 of Summit County Records. Said Sub-Lots are subject to all legal highways.

Parcels Nos. 1, 2 and 3 above, having been deeded to the defendant corporation, named in the deed as The Serbian Orthodox Church, said deed being recorded in Volume 1223, Page 443 of Summit County, Ohio Records.

PARCEL 4:

Situated in the City of Akron, County of Sum-

mit and State of Ohio and known as being all of lot number Fifty-nine (59) and a part of Lot Number Fifty Eight (58) of the 2nd Re-Allotment made for Ed Bruch as recorded in Plat Book 8, Page 37, Summit County Records, and more fully described as follows:

Beginning at an iron pin at the Northwest corner of said Lot Number Fifty-Nine (59); thence South 2° 06′ 30″ West along the West line of said Lot 162.85 feet to an iron pipe at the Southwest corner thereof; thence East along the South line of said Lots Fifty-Nine (59) and Fifty-Eight (58) 40.00 feet to an iron pipe; thence North 2 deg. 06′ 30″ East 162.85 feet to an iron pipe in the North line of said Lot Number Fifty-Eight (58) and the South line of Lake Street; thence West along the South line of Lake Street and the North line of said Lots Numbers Fifty-Eight (58) and Fifty-Nine (59) 40.00 feet to the place of beginning as surveyed June 23rd, 1927 by S. G. Swigart and Son.

Said Parcel No. 4 was conveyed to the defendant corporation by deed wherein said corporation is named as Serbian Orthodox Church (St. Demetrius) by deed recorded in Volume 2219, Page 549 of Summit County, Ohio Records.

PARCEL 5:

Situated in the City of Akron, County of Summit and State of Ohio and being known as Lots Nos. 293 and 294 in the Miller Allotment as recorded in Plat Book 7, Page 61 of Summit County, Ohio, Records.

Said Parcel No. 5 was conveyed to the defendant corporation by deeds wherein said corporation was named as Serbian Orthodox Church of Akron.

4. That the plaintiff-association, its trustees, officers and clergy and those in sympathy with them have by their conduct created a schism in the said Serbian Orthodox

Church of St. Demetrius of Akron, Ohio, in that the plaintiff and the above mentioned parties have rebelled against the patriarchy and hierarchy and consider themselves a part of a church which is not part of the orthodox system and not a part of the said Serbian Orthodox Church and are not a part of the Eastern Orthodox Church and are not the true Serbian Orthodox Church of St. Demetrius; that the evidence identifies the defendants and those in sympathy and in association with them as the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and as the true and rightful successors to the Serbian Orthodox Church of St. Demetrius of Akron, Ohio and to the property being held in trust by the corporation known as the "Servian Orthodox Church of Akron, Ohio," and that said defendants and those in sympathy and in association with them are maintaining and professing their adherence and submission to the said Serbian Orthodox Church and the said Eastern Orthodox Church.

It is, therefore, hereby ORDERED, ADJUDGED AND DECREED that plaintiff, its sympathizers and those in association with them, including the officers, trustees and clergy who claim to be the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and the corporation the Servian Orthodox Church of Akron, Ohio, and its officers and trustees relinquish their offices and positions of trust and relinquish and deliver possession of all of the church properties of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, including the above described real estate as well as all personal property, in the possession of either the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, or the corporation known as the "Servian Orthodox Church of Akron, Ohio," both real and personal, including all records of every kind and description to the defendants forthwith, all of which

property the plaintiffs are unlawfully withholding from the defendants and those in sympathy with them.

It is the further order of this Court that upon the filing of this entry the plaintiff-association and said corporation, their officers, trustees, followers, sympathizers and clergy are hereby restrained and enjoined from selling, conveying, disposing of, encumbering or committing any waste upon or damage to any of the aforesaid church property whether held in the name of the church itself or by said corporation and it is further ordered that the plaintiff-association, its officers, trustees, followers and clergy are hereby permanently enjoined from using the words "St. Demetrius" as a means of identification for any church organization which they may in the future conduct or maintain.

OPINION OF THE COURT OF APPEALS.

(Argued June 7, 1967.)
(Decided Aug. 2, 1967.)

HUNSICKER, *J.*

An appeal on questions of law and fact is lodged in this court from a judgment entered by the Common Pleas Court of Summit County, Ohio. That judgment, in its principal part, said:

> "It is, therefore, hereby ordered, adjudged and decreed that plaintiff, its sympathizers and those in association with them, including the officers, trustees and clergy who claim to be the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, and the corporation the Servian Orthodox Church of Akron, Ohio, and its officers and trustees relinquish their offices and positions of trust and relinquish and deliver possession of all of the church properties of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, including the above described real estate as well as all personal property, in the possession of either the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, or the corporation known as the 'Servian Orthodox Church of Akron, Ohio,' both real and personal, including all records of every kind and description to the defendants forthwith, all of which property the plaintiffs are unlawfully withholding from the defendants and those in sympathy with them."

The matter comes on to be heard upon a petition, and an amended answer and cross petition to which was attached ninety-six interrogatories.

A motion to strike from the files such amended answer and cross petition or, in the alternative, to require the defendants-appellees to redraft and reform such plead-

ing, was filed in the trial court, and overruled. Inasmuch as this is a trial de novo, the plaintiff-appellant presents this motion for this court to rule upon. It is not difficult to determine that the amended answer and cross petition is prolix to the extreme, and does not meet the requirement of good pleading as stated in the statutes. (See Chapter 2309, Ohio Revised Code.) Most of the verbiage of the answer and cross petition is evidentiary in character and, hence, has no place in a pleading. We are, however, met with a practical problem. The case has been orally argued and submitted to this court. Long and exhaustive briefs have been filed. All of the evidence (much of which is extraneous to the real issue involved herein), is before this court by way of typed and printed material. To now strike from the files this pleading, and again hear the matter on a new or changed pleading, would work a hardship on all parties, including this court. For the foregoing reasons only, we overrule the motion of the plaintiff-appellant and proceed to decide this case on its merits.

The plaintiff-appellant, Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, says: it is an unincorporated association organized for religious worship, and has been in existence since 1918; the name "St. Demetrius Church" represents the group that has such continuous existence; another group of people are now using that name, or one so similar as to be confusing to the people of this community; such conduct of this latter group will "lessen the value of the good will that has come to be attached to the name of 'St. Demetrius' * * *" and "irreparable harm and damage" will be caused this plaintiff-appellant, for which it has no adequate remedy at law. An injunction is asked for, and other relief as is proper.

The amended answer and cross petition, among many things, says:

"1. The association which has filed and is prosecuting this action is not the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, but is a schismatic group unlawfully and wrongfully ignoring and disobeying the orders and directives of said Church and wrongfully and unlawfully using the name of said congregation in this action which they have no capacity or right to prosecute; nor is the common religious worship in which said group is engaged the worship of the Serbian Orthodox Church; * * *."

Reduced to its simplest terms, this action (one of many in the United States), concerns the church administration and religious affiliation of followers of Serbian Orthodoxy. To which shall the religious allegiance of these people be pledged—Libertyville, or Belgrade? To whom does the church on Lake Street, and the affiliated properties, belong? These are some of the questions in this case. To decide these issues, it is necessary to determine the power of the Belgrade hierarchy over the church of St. Demetrius, and the diocese of which it must be a part in order for it to be a Serbian Orthodox church.

This court, when confronted with a somewhat similar situation in Lorain County, Ohio, in the case of *Ralich, et al., v. Vukelich, et al.*, No. 1710, decided June 29, 1966, said:

"The Serbian Eastern Orthodox Church is hierarchal and episcopal in structure, as distinguished from autonomous and congregational. The structure, in general, is: a mother church, dioceses, and parishes. The mother church is administered by a Holy Assembly of Bishops, which is presided over by a Patriarch; the diocese by a bishop, and the parish by a priest. The Holy Assembly of Bishops consists of all bishops of the Church at home and abroad, and the Patriarch is chosen from this body. The executive arm of the Church is a Holy Synod, and this, too, is presided

over by the Patriarch. The Holy Synod, acting for the Holy Assembly of Bishops, is supreme in ecclesiastical matters. The mother church, as well as the dioceses, have a written constitution, and the parishes have by-laws, which govern their operations. One of the prerogatives of the mother church is the creation of dioceses and bishops.

"Pursuant to its right, the geographically large diocese of the United States and Canada was divided by the mother church into an Eastern, a Midwestern, and a Western diocese. The Bishop of the Midwestern diocese, who had been the Bishop of the Diocese of the United States and Canada, opposed the division, although he had originally requested it. A controversy arose, which caused the mother church to depose that Bishop, and name a new Bishop to be the chief pastor. This deposed or unfrocked Bishop then sought to enlist various parishes to recognize him as their true Bishop, and thereby establish an American branch of the Church, separate and apart from control by the Holy Assembly of Bishops, the Holy Synod, and the Patriarch in Belgrade, Yugoslavia."

We freely admit that such pronouncement was not necessary to a decision in that case. We shall examine the subject again in the light of the evidence before us to determine whether the views there expressed need now be adopted in toto in this action.

The chief claim of the parties herein revolves around the right to occupy and use the real property owned by the parish of St. Demetrius. The plaintiff-appellant says that it has such right because, as a part of the diocese originally established as the "Diocese of the United States of America and Canada," its constitution, accepted by the church in Belgrade, Yugoslavia, at the time this diocese was acknowledged by the mother church, provided for full administrative powers to rest in the local diocese, and the

only subjection to the mother church was in ecclesiastical matters. The defendants-appellees, adherents of the Patriarch of Belgrade, insist that all power of administrative control belongs to the administrative authorities of the church in Yugoslavia.

There are two constitutions which must be examined, and interpreted, to reach a conclusion in this matter: first, the constitution of the Diocese of the United States of America and Canada; and, second, the constitution of the Serbian Orthodox Church in Yugoslavia, also called "Servian Orthodox Church." If the local diocese is autonomous, then the position of the plaintiff-appellant is correct; if not, then it must be considered in violation of lawful church authority, and its right to control the church, and its property, must be denied.

There is no question but that the plaintiff-appellant follows a faction that insists it is an autonomous church. Prior to this declaration of autonomy, there was complete ecclesiastical power in the mother church. We believe it is the right of the mother church to create and depose bishops, and, with that matter, this court will not interfere. We direct ourselves only to the right of the church in Belgrade to change the geographical area of the American-Canadian Diocese without the approval of that diocese. We do not deem it necessary to discuss the claims that the Holy Assembly of Bishops, or the Holy Episcopal Council of the Serbian Orthodox Church, wrongfully deposed a bishop of the American-Canadian Diocese. We do not discuss the attempt of such bishop to be recognized by other orthodox patriarchs as the leader of an autonomous American Serbian Church. That subject is not a matter for the civil courts to determine.

The plaintiff-appellant adheres to the original diocese, with the deposed bishop at its head; the defendants-

appellees adhere to a newly created diocese known as the "Midwestern Diocese." If there was no unilateral power to change the diocesan territory, then the Diocese of the United States of America and Canada is still in existence, and it is to that diocese that the local church owes allegiance. If we assume such latter statement to be a conclusion herein, then it is the duty of the mother church to designate a new bishop to assume the function of bishop of the "Diocese of the United States of America and Canada."

This court has heretofore accepted the following rule in cases similar to that before us:

> "The general rule, as it applies to religious societies which are in association with an ecclesiastical system, is that, where one or many of the members withdraw from the general church, such withdrawing members cannot take with them any of the church property owned by the church."
>
> *The Russian Orthodox Greek Catholic Church etc. v. Burdikoff, et al.*, 117 Ohio App. 1.

The church of St. Demetrius was in existence, as were many other churches of the Serbian Eastern Orthodox rite, prior to the establishment of an American-Canadian diocese. It was in 1920 or 1921, after a special commission report by Bishop Jefrem, that an American-Canadian diocese was established by the church in Yugoslavia. Its purpose was to bring together all of the churches in America that followed the rite or liturgy of the Serbian Eastern Orthodox church.

We direct our inquiry to the following documents introduced in evidence: the Law and Constitution of the Serbian Orthodox Church (1931); the Constitution of the Serbian Orthodox Church (1957); the Constitution—Ser-

bian Orthodox Diocese in the United States of North America and Canada (1935); the Constitution and Bylaws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio (1918); Bylaws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio (1960); and the Articles of Incorporation of The Servian [Serbian] Orthodox Church of Akron, Ohio.

In June, 1919, the Servian [Serbian] Orthodox Church of Akron, Ohio, was incorporated as a religious organization, with its worship to be according to the rules, regulations and customs of the Servian [Serbian] Orthodox Church. Since that time until the present controversy, the congregation known as the Serbian Orthodox Church School Congregation of St. Demetrius has been worshiping according to that rite. Upon the establishment, by the mother church (in what is now called Yugoslavia), of the diocese of the United States of North America and Canada, St. Demetrius became then, and has since consistently been a part of, such diocese. Whether it should now be a part of that diocese depends upon the relation of that diocese to the mother church, and the power of the mother church to change the geographical limits of that diocese.

Article 1 of the Bylaws of the Serbian Orthodox Church School Congregation of St. Demetrius, Akron, Ohio, adopted in 1960, says:

> "The name of the Serbian Church School Congregation of Akron is: Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio.
>
> "The seat of the Congregation is in the city of Akron, state of Ohio, United States of America. The Congregation is an integral part of the Serbian Orthodox Diocese of the United States and Canada. In accordance with Articles 4 and 68 of the Diocesan Constitution, the Congregation submits itself to the regulations of the Diocese and directives of the

> Diocesan authorities. The official language of the church school congregation is American and Serbian."

Article 18 of the Bylaws reiterates this statement by the following provision:

> "The Serbian Church in Akron is an integral part of the Serbian Orthodox Diocese of the United States and Canada. It accepts and follows all regulations and laws governing the diocese. As such it accepts and executes all decrees and decisions from the diocese."

The Bylaws further, in Article 21, state that "the only legal owner of all holdings is the congregation." "Holdings" is defined as money, personal property, and real property.

The congregation of St. Demetrius was an integral part of that Serbian Orthodox diocese which governed the geographical area of Akron, Ohio. If such diocese still exists, then St. Demetrius remains in that diocese.

When St. Demetrius became a part of the diocese in the United States, the Serbian Orthodox Church in Yugoslavia was a state church under the theory of—one state, one church. Those who controlled that church must be citizens of Yugoslavia; the Constitutions of 1931 and 1957 so specify. The Serbian Orthodox Church Constitution of 1931, in Article 262, establishes a Chancery of Administration "which performs administrative work of the Church self-government according to the directives and under the supervision of the Patriarchal Executive Board and under the supreme supervision of the Patriarch. The Chancery of Administration has these departments: General, Economic, and Financial."

Throughout the Serbian Orthodox church constitutions of 1931 and 1957, reference is frequently made to two divisions within the church, i.e., the ecclesiastical-

hierarchical, and church-administrative bodies and organs. In both of these constitutions, there is a separate article dealing with dioceses other than those within the territorial limits of Yugoslavia. In such article, the "Serbian Orthodox Church in the United States of America and Canada with its see in Chicago" is named. In the 1957 constitution, these words are added: "* * * or in the monastery of St. Sava, in Libertyville, Illinois."

Article 15 of the Constitution of 1931, and Article 16 of the Constitution of 1957, say:

> "The decisions concerning the creation, name, abolition, districting and the sees of the Dioceses, and concerning the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops in accord with the Patriarchal Council."

The Constitution of the Serbian Orthodox Diocese in the "United States of North America and Canada," published in 1939, says that it was accepted at the Diocesan Church-National Assembly in 1927, amended 1931 and 1938, and was accepted by the Holy Bishop's Assembly of the Serbian Orthodox Church.

In the "First Part" of this latter constitution, under "Position of the Serbian Orthodox Diocese in the United States of North America and Canada," it provides that such diocese is "considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate * * *;" all statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church are compulsory for the American-Canadian Diocese; the American-Canadian Diocese enjoys full administrative freedom, and can independently regulate and rule the activities of its church, school, and other diocesan institutions; the diocesan authorities decide independently on all

matters within their jurisdiction, and in accordance with the diocesan constitution.

Also, in the "First Part" of the Constitution of the American-Canadian Diocese, in Article 12, it is provided that "* * * the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority."

In that Article 12, it further says:

> "The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.
>
> "Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.
>
> "Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interests of the church, he shall halt the execution of such decision and submit the matter for rediscussion and re-decision. If he again is not in accordance with the re-decision as re-considered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod."

In Article 147 of the Constitution of the American-Canadian diocese is the following provision:

> "The property of the Church-School Congregation in individual colonies belongs exclusively to the said congregation without Diocesan rights to same. Only in the event of request by the membership of said congregation, does the Diocese have the right to control same."

It is apparent from a study of the constitutions that the church in America and Canada retained full administrative freedom and is only "an organic part of the Serbian Patriarchate ecclesiastically-judicially." As was said in the case of *Serbian Eastern Orthodox Diocese etc., et al. v. Firmillan Ocokoljich,* 72 Ill. App. 2d 444; 219 N. E. 2d 343:

> "Further, the Diocese [American-Canadian] did not surrender to the Serbian Patriarchate the power to alter or change its basic governing law—its Constitution. The Serbian Patriarchate was not given the power to initiate changes in the Diocesan Constitution, but was only given the power to approve changes to the Constitution introduced and adopted by the Diocesan Assembly. It is inconceivable to us that the Serbian Patriarchate, which is denied the express power to alter or amend the Constitution of the Diocesan, has the implied power to totally revoke and abrogate this constitution by decreeing the Diocese to no longer be in existence. We cannot accept such conclusion and find the Constitution of the Serbian Patriarchate and that of the Diocese consistent in this regard."

It is our conclusion, after an examination of the issues presented to us, that the "Constitution of the Serbian Orthodox Diocese in the United States of North America and Canada" does not grant to the mother church in Yugo-

slavia the power to unilaterally divide the diocese into several dioceses. It is within the province of that church to appoint a new bishop to regulate the American-Canadian diocese only within the terms of the American-Canadian Constitution. In this conclusion, we change the view we expressed on that subject in the case of *Ralich, et al. v. Vukelich, et al., supra.*

The true identity of St. Demetrius before the present schism was allegiance to the Patriarch of Belgrade, and it is to those who recognize his authority to appoint a new bishop for the American-Canadian Diocese who have the right to control the Church of St. Demetrius. When Bishop Dionisije sought to declare that there existed an autonomous church in America and Canada, with himself as its bishop, he effectively separated those who followed him from all claims to control the church properties of the congregation of St. Demetrius as it existed prior to the schism.

The injunction sought by the plaintiff-appellant is denied. Relief is granted to the defendants-appellees as was entered in the Court of Common Pleas. A journal entry shall be filed in accord with the judgment reached herein.

Decree for the defendants-appellees.

BRENNEMAN, *P.J.*, and DOYLE, *J.*, concur.

OPINION OF THE COURT OF APPEALS ON MOTIONS AND APPLICATIONS.

(Argued Sept. 26, 1967.)
(Decided Oct. 11, 1967.)

PER CURIAM:

In the above captioned case, several motions, and pertinent papers, have been directed to this court, all of which matters we will determine in this one opinion.

These motions and applications, in their order of filing, are:

1. Motion by plaintiff-appellant for a supplemental opinion, and answer to interrogatories.

2. Motion by plaintiff-appellant for conclusions of fact found separately from conclusions of law.

3. Proposed conclusions of fact and proposed conclusions of law submitted by plaintiff-appellant.

4. Motion to strike from the files the motion of plaintiff-appellant for a supplemental opinion, and answer to interrogatories.

5. Objections to proposed conclusions of fact and conclusions of law submitted by plaintiff-appellant, with suggested conclusions of fact and conclusions of law, as proposed by defendants-appellees.

6. Answer to the motion that requests this court to strike plaintiff-appellant's motion for supplemental opinion.

The request to write a supplemental opinion is, after thorough consideration, denied. We believe that in the opinion as written, and in the following conclusions of fact and conclusions of law, all of the matters that the law requires and permits us to say, concerning this controversy, is stated. This court will not interfere in the internal affairs of the Serbian Orthodox Church of St. Demetrius.

The denial of the motion for a supplemental opinion disposes of all matters except the conclusions of fact found separately from the conclusions of law. This latter matter is a statutory duty which we recognize, and with which we will comply.

CONCLUSIONS OF FACT.

1. In June, 1919, the Servian [Serbian] Orthodox Church of Akron, Ohio, was incorporated as a religious organization, with its worship to be in accordance with the rules, regulations and customs of the Servian [Serbian] Orthodox Church. Since that time until the present controversy, the congregation known as the Serbian Orthodox Church School Congregation of St. Demetrius has been worshipping according to that rite.

2. Upon the establishment of the Diocese of the United States of North America and Canada by the mother church with its See now in Belgrade, Yugoslavia, this Church of St. Demetrius became a part of that Diocese and, thus, a part of the Serbian Orthodox Church, with its mother church in what is now Yugoslavia.

3. The Serbian Orthodox Church is hierarchal and episcopal in structure, as distinguished from autonomous and congregational.

4. Those who presently control the Church of St. Demetrius, and its property, are part of a faction that claims full ecclesiastical autonomy and, hence, are not subject to the mother church in Belgrade, Yugoslavia.

5. Those who presently control the Church of St. Demetrius, and its property, are a schismatic body.

CONCLUSIONS OF LAW.

1. The mother church in Belgrade, Yugoslavia, may depose and change bishops of the Diocese of the United States of North America and Canada without prior consultation with the members of the Diocese.

2. The mother church, now in Belgrade, Yugoslavia, has no power to unilaterally change the geographical limits of the Diocese to which St. Demetrius owes allegiance; such power, under the Constitution of the Diocese of the United States of North America and Canada, rests in the cooperative effort of the mother church and the Diocese.

3. The general rule, as it applies to religious societies which are in association with an ecclesiastical system, is that, where one or many of the members withdraw from the general church, such withdrawing members cannot take with them any of the church property owned by the church.

4. Those who presently control the Church of St. Demetrius, and its property, being in schism, have forfeited all right of membership in the Serbian Orthodox Church and in the Church of St. Demetrius.

5. Those who presently control the Church of St. Demetrius have no right of property in such church, and no right in its real and personal property.

6. Those who presently control the Church of St. Demetrius have no right to worship in, or occupy any of the property of, such church.

7. The right of anyone in schism to return to worship in the Church of St. Demetrius must be determined under the constitution and by-laws of that Church, its Diocese and its mother church, and by their church bodies only.

On September 27, 1967, the defendants-appellees requested of this court oral argument on their motion to secure possession of the entire church premises, or, in the alternative, for the appointment of a receiver to take charge of such property. This request is denied.

This court orders that a journal entry be filed in this case within ten (10) days of the filing of these conclusions of fact found separately from conclusions of law; otherwise, this court will enter its own order.

MYRON T. BRENNEMAN,
Presiding Judge.

OSCAR HUNSICKER,
Judge.

ARTHUR W. DOYLE,
Judge.

JOURNAL ENTRY OF THE COURT OF APPEALS.

(Filed October 23, 1967.)

This appeal on questions of law and fact from a judgment entered by the Common Pleas Court of Summit County was heard on the transcript of testimony, on the exhibits admitted in that court, and on the written briefs of the parties followed by oral argument to this court. Following an opinion of this court rendered on August 2, 1967, plaintiff-appellant and defendant-appellees both submitted further requests to this court, and the court now, in disposition of all matters before it, makes the following findings and orders:

1. In June, 1919, the Servian [Serbian] Orthodox Church of Akron, Ohio, was incorporated as a religious organization, with its worship to be in accordance with the rules, regulations and customs of the Servian [Serbian]

Orthodox Church. Since that time until the present controversy, the congregation known as the Serbian Orthodox Church School Congregation of St. Demetrius has been worshipping according to that rite.

2. The Church of St. Demetrius was in existence prior to the establishment of an American-Canadian Diocese. Upon the establishment of the Diocese of the United States of North America and Canada by the mother church with its See now in Belgrade, Yugoslavia, the Church of St. Demetrius became a part of that Diocese, and has since consistently been a part of that Diocese and thus part of the Serbian Orthodox Church with its mother church in what is now Yugoslavia.

3. The Serbian Orthodox Church is hierarchical and episcopal in structure, as distinguished from autonomous and congregational.

4. The mother church in Belgrade, Yugoslavia, may depose and change bishops of the Diocese of the United States of North America and Canada without prior consultation with the members of the Diocese.

5. The mother church now in Belgrade, Yugoslavia, has no power to unilaterally change the geographical limits of the Diocese to which St. Demetrius owes allegiance; when the mother church in 1963 attempted to divide the Diocese of the United States of North America and Canada, it had no power to do so; such power rests in the cooperative effort of the mother church and the Diocese.

6. Those who presently control the Church of St. Demetrius and its property are part of a faction that claims full ecclesiastical autonomy from the Serbian Orthodox Church and hence are a schismatic body.

7. The schismatic acts of those now in control amount to a withdrawal from the general church and the schis-

matics cannot, after such withdrawal, take with them any of the property owned by the church, nor exercise membership rights in the Serbian Orthodox Church and in the Church of St. Demetrius.

8. That faction now in control of St. Demetrius has no rights in the real and personal property of St. Demetrius, nor any present right to participate in the control of the church's property or its services.

9. That faction now in control of St. Demetrius has no right to worship as a group in St. Demetrius. Individual members of that faction may acquire rights of membership in St. Demetrius only in accordance with the Bylaws of St. Demetrius, in accordance with the Constitution of the Serbian Orthodox Church in the Diocese of the United States of North America and Canada and in accordance with the Constitution of the Serbian Orthodox Church with its See in Belgrade.

10. The motion of plaintiff-appellant for a supplemental opinion is denied as are defendant-appellees' motion to strike and their request for oral argument on their motion to secure immediate possession.

11. In accordance with the judgment herein rendered, the injunction sought by the plaintiff-appellant is denied; and it is ORDERED, ADJUDGED and DECREED that plaintiff-appellant, by its officers, relinquish within twenty-one days of the date of this entry all of the church properties of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, to defendant-appellees, as representatives of the Serbian Orthodox Church School Congregation of St. Demetrius of Akron, Ohio, and that the defendant corporation, The Servian Orthodox Church of Akron, Ohio, by its officers and trustees, relinquish all its corporate holdings to defendant-appellees as representatives of

the Serbian Orthodox Church School Congregation of St. Demetrius of Akron, Ohio.

Should an appeal ensue, supersedeas bond is fixed in the sum of Five Thousand Dollars ($5,000.00). The bond previously filed in this matter in that amount shall operate as a continuing stay of this judgment until any such appeal be finally determined.

If no appeal ensues, the supersedeas bond heretofore filed in this proceeding shall remain in full force and effect until the order contained in Paragraph 11 is complied with and until the further order of this Court.

ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY.

(January 17, 1968.)

It is ordered by the Court that this motion is overruled.

ORDER OF THE SUPREME COURT OF OHIO DISMISSING APPEAL AS OF RIGHT.

(January 17, 1968.)

This cause, here on appeal as of right from the Court of Appeals for Summit County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Summit County for entry.

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING.

(February 14, 1968.)

It is ordered by the court that rehearing in this case is denied.

APPENDIX B.

CASES INVOLVING THE SAME CONTROVERSY AS ST. DEMETRIUS v. KELEMEN.

Some of these cases have been finally resolved and others are pending either on the trial or appellate level:

Ohio:

a. Akron—

Popadich v. Shatrich, C/P No. 245,972.

State of Ohio ex rel. Pappas v. Shatrich, et al., C/A No. 5578. Dismissed. No appeal.

b. Youngstown—

Dragelevich, et al. v. Rajsich, et al., C/P No. 175,596 (Mahoning Cty.), Submitted 12/65. No opinion yet.

c. Lorain—

Ralich, et al. v. Vukelich, et al., C/P No. 68686 (Lorain Cty.) and C/A No. 1710. Decided 6/29/66. No appeal taken. (N. B. Reference is made to this Appellate Opinion as being erroneous in the same Opinion from which plaintiff-appellants are seeking here to appeal.)

d. Cleveland—

Jovanovic, et al. v. Simich, et al., C/P No. 790,246 (Cuyahoga Cty.); C/A No. 26957. Decision rendered 3/22/66 by Judges Duffy, Duffy and Bryant, sitting by designation.

St. Sava v. Naperta, et al., C/P 795014 (Cuyahoga Cty.); C/A No. 27,520. Decision rendered 4/7/66 by Judges Duffy, Duffy and Bryant, sitting by designation.

Both of these cases were remanded with instructions for further proceedings which proceedings were had and again appealed under Case Nos. 28,521 and 28,524. No further appellate opinion has yet been issued.

Illinois:

a. *Serbian Eastern Orthodox Diocese for U. S. A. and Canada, et al. v. Ocokoljich, et al.*, Circuit Ct. Case No. 63-1644, consolidated with Case No. 63-2312 (Lake Cty.) Both heard under one appeal, the Opinion of which is reported at 72 Ill. App. 444 and 219 N. E. 2d 343. The case was remanded and trial of matters yet to be resolved as of the date of the Appellate Opinion has not been scheduled.

Indiana:

a. *Merich v. Kragulac*, Stark County Circuit Court No. 63-315—pending.

b. *Kragulac v. Tumbas*, Lake County Circuit Court No. C66-677—pending.

c. *Pasalich, et al. v. Draskovich, et al.*, Elkhart Circuit Court No. 32391—Opinion issued. Not yet journalized.

Also in stages of appeal in Indiana are two separate cases identically named *Kragulac v. Merich*—Nos. 20503 and 28714.

Minnesota:

a. *Danich, et al. v. Andrich, et al.*—Dakota County First Judicial District (South St. Paul)—at issue and ready for trial assignment.

Pennsylvania:

a. *Gvozdich v. Dudukovich,* C/P Cambria County, Pa. (Johnstown, Pa.). Trial partially completed —awaiting scheduling.

New Jersey:

a. *The General Council of Cossacks v. Rev. Adam Burhin,* Superior Court, Chancery Division, Cumberland Cty., Case #C-200-63. Finally decided. No appeal taken.

b. *Serbian Eastern Orthodox Congregation of St. George et al. v. Serbian Eastern Congregation of St. George, et al.*—pending. Superior Ct. of N. J., Union County, Docket C-2874-64 and C-3603-64.

Canada:

Mirkovich, et al. v. Bozanich, et al.—Ontario Supreme Court. Finally decided. No appeal taken.